90-1411

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

Martha N. Stores c/o
Freddie D. Bibbs and
Jimmie Drew Lockhart, Sr.,
Pro Ses., Petitioners

vs.

Matanuska-Susitna Borough, Inc. et. al.
Mr. Patrick E. Lancaster, et. al.,
Mr. Jim Psenak and his
Construction Company et. al.,
Respondents.

—

PETITION FOR WRIT OF CERTIORARI TO The Supreme Court of the State of Alaska

PETITION FOR WRIT OF CERTIORARI

Jimmie Drew Lockhart, Sr.
and Freddie Bibbs
3727 Randolph Street
Anchorage, Alaska 99507
(907) 563-1807

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QUESTIONS PRESENTED

1. In the complete absence of any factual contact such as formal legal letters, petition, or an informal hearing or a formal proceeding between petitioners, respondents any judge or judges on the bench of the Supreme court even when under the color of Alaska Supreme Court judges sworn fiduciary responsibility under Alaska statutes Title 22. Judicial §§ 22.05.010, 22.10.010: Alaska Constitution [a]rticle IV, §§ 1, 2(a) & 3., ib., [a]rticle I, §[7]; U.S. Constitution amendments V, VII, X, XIII and XIV; 42 U.S.C.S. §[1983]., 28 U.S.C.S. §[1331]. as well as respondents' policies and practices in the administration of the aforementioned several Alaska and federal statutes. Accordance to the court records respondents committed proved conspiracy through

intended irregular administering legal procedure that led to fraud and sabotaged us out of our constitutional guaranteed rights as set out supra during the course of this action committed by the supreme Court of Alaska Clerk action on 6/27/1990, 9/14/1990 ad 9/21/1990, resulting from the lower court and respondents' irregular administered illegal acts, practices, revolutionized policy obstructing the administration of justice. See: concomitant [Appendices] A-1 through A-25, the commenced happening on the 12th day of August 1985 through the 21st day of September 1990, which is a total time of over six (6) years full time doings clear throughout the bitter entire proceeding by conspiracy to committing full time fraud and deceit practices by (a) Lower court Judge Beverly W. Cutler, (b) attorney for

respondents Richard (Dick) Weinig, (c) Alaska Supreme Court clerk Mr. David A. Lampen, which clearly reflect all acts alleged herein reflect from the records was fully condoned by the State of Alaska Supreme Court, despite its sworn(ed) fiduciary responsibility to protect our guaranteed constitutional equal protection clause of the 14th amendment to the United States constitution and article I. §[7] to Alaska constitution. See: "A-1", 1st ¶, particularly lines four and five (4 & 5). Which constitute upper-crust downtrodden slandering disadvantaged black pro se litigants under redhearring because of our race and color. See: 42 U.S.C.S. §§[1981, 1982 & 1983], the 13th amendment to the constitution of the United States.

2. According to petitioners' super set-out authorities on conspiracy,

irregularities and fraud acts were done by respondents against petitioners, while at all time knowingly or should have known, that such acts, practices, and policies were in direct violations of obstructing the administration of justice that should have warranted "a final State Court decisions" within the meaning of decisions of the United States Supreme Court fiduciary responsibility of upholding the equal protection due process of law clause set-out within the 14th amendment of the United States constitution, and if not did the State Courts have subject-matter jurisdiction over the petitioners case?

3. Contrary to the responsibility restored upon the United States Supreme court to establish case law reserving the rights of the petitioners, and all similarly situated citizens of the United

States in the exercise of its constitutional Appellate jurisdiction over the rights of the petitioners' due process of law, emanating from the intent of the 14th amendment of the United States constitutional equal protection clause. Accordingly, such Alaska Superior Court finding (Order) failed to honor its fiduciary ethic duty by not invoking to the petitioners the rights of law in this sore-matter. Which was followed by the Alaska Supreme Court shamefaced corroborated which such sad unethical heinous style of practices by such high court officials' administrators' "findings," is what should be construed highly "unintelligibly illegal bad conduct," for an officer of any court to redherringly assert, while at all times accepting one of the respondent's appeal brief in case # S-3391 Civil, under the

title of Jimmie Drew Lockhart, Sr., pro se., vs. Alaska Sales & Services, Inc., et. al., filed in this Alaska Supreme Court on April 24th 1990 before this very same Supreme Court Clerk. And through to date February 7th 1991 there has been no Supreme Court finding. I wonder why? I further add that said appeal case does not involve color of state law as severe as this matter such as this stagnated matter denying petitioners a day in neither of the state court, Superior or Supreme. Wherein it should be only considered that Alaska Supreme Court decision was a repeat of the same treatment which was done in lower court. Therefore, neither did the Alaska Supreme Court honor its own Alaska Appellate Rules 201 (a) through 218, AS 22.05.010, thereby copying the lower court style of not placing honorary on

AS 22.07.020, or any respect to [a]rticle I. §[7] to Alaska [c]onstitution, or the 14th amendment to the United States constitution with respect keeping with judicial ethic practices of stare decisis does physically change the original form and meaning of the Superior Court's original "verb" set out by the Superior Court of Alaska 8/13/1985 and June 15th, 1988 Orders at all times favoring respondents and its attorney's malpracticing acts over petitioners, by purposely omitting any show of sufficient authority evidence in support of it's finding of facts, and followed by the Alaska Supreme Court Clerk's 27th day of June 1990 scandal own set-out "verbs" asserted word (sic) ". . . unintelligible, . . ."., should have sufficed a recommendation by the lower court bias act

for the Alaska Supreme Court to have invoked a "de nova" decision by its Justices, to reverse, the substance of the original form and meaning of the United States Supreme Court, responsibility of upholding and invoking the equal protection clause to the 14th amendment of the United States Constitution.

4. The records reflects during what we thought to be forthcoming a pre/trial stage (which never happened) respondents on several different occasions at several different times moved both court for some type of dismissal, "emphasis added." In fact, respondents moved for dismissal so many times that it appeared to us to have wore both court's moral fiduciary responsibility down, thereby causing the in-question courts to grant dismissal favoring the respondents out of disrespect

for due process of law as set out supra, as per Alaska statute "PART II. PROCEDURE ON APPEALS as of RIGHT." (Rules 201 through 218). AS 22.05.010 and AS 22.07.020, 42 U.S.C.S. §§ 1981 through 1983 respectively.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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vs.

Matanuska-Susitna Borough, Inc. et. al.
Mr. Patrick E. Lancaster, et. al.,
Mr. Jim Psenak and his
Construction Company et. al.,
Respondents.

To the Honorable Chief Justice and
Associate Justices of the Supreme Court
of the United States:

Mr. Jimmie Drew Lockhart, Sr., and Mr. Freddie Bibbs pro se petitioners herein, respectfully pray that a writ of certiorari issue to review the order of the Supreme Court of the State of Alaska entered this case on the 20th day of December 1988.

OPINIONS BELOW

The July 27, September 14 and 21, 1990

Orders of the Supreme court for the state of Alaska whose decision is herein sought to be reviewed is appendix as pages A-1 thru 1.1, A-2 thru 2.1, A-3 thru 3.1, and A-4 thru 4.1.

The Superior court for the State of Alaska herein decisions is also sought to be reviewed, is also appendix as pages A-5, A-6 thru 6.4, A-7 thru 7.3, A-8 thru 8.3, A-9 thru 9.2, A-10 thru 102., A-11 thru 11.1, A-12 thru 12.1, A-13 thru 13.1, A-14 thru 140.10, A-15 thru 15.1, A-16 thru 16.1, A-17 thru 17.1, A-18 thru 18.1, A-19 thru 19.4, A-20 thru 20.1, A-21 thru 21.1.

JURISDICTION

The Orders of Alaska Supreme Court was entered on July 27, September 14th and 21, 1990. The jurisdiction of United States Supreme Court is invoked pursuant to 28 U.S.C. § 1254 (1) and the United States

Supreme Court Rule 17.1 (a) and (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

While the pertinent verbal tests of the United States and State of Alaska statutory provisions involved are set forth within the following; The United States constitution [a]rticle III. §§ 1, and 2 [1], [a]rticle IV § [1], § 4. [a]rticle VI § [2], amendments IV, V, VII, VIII, XIII §§ 1 & 2, and the XIV § 1., of the United States constitution, Article I. §§ 5, 7, 12, 15, 16, 18 & 22., Article IV §§ 1 & 2 (a) of Alaska constitution. Alaska statutes 22.05.010 and 22.07.020. Alaska Appellate Rules 201 (a) & (b), 202 (a) & (b). Alaska Civil Rules 12 (a)(c)(e and (h)(1), Rule 55 (1)(b)(1)(c)(d), Rule 56 (a)(b)(c)(d)(3) & (g). Rule 77 (a)(b)(1)(2) 7 (c). Rule 72 (a)(c)(e)(2)

and Alaska Evidence Rule 43.1 (a).

STATEMENT OF THE CASE

Based upon the Alaska State Supreme Court, July 27, September 14, and 21st, 1990 Orders practices vs. Article I. § 7, article IV §§ 1 & 2 (a), § 3, Alaska § 22.05.010 and § 22.07.020., the Alaska Appellate Rules, the constitution of the United States as set out on supra P, 3., 42 U.S.C.S. inter alia, §§ 1981, 1982 & 1983., from the results of petitioners' prior pleadings cause the Alaska Superior and Supreme Courts to invoke appendices Pp. A-1 through A-21. Accordingly, both Alaska States court's acts are construed of committing violations upon the petitioners' constitutional rights from the legal use of their benefits of the due process of law and equal justice, which is guaranteed to petitioners thereby.

Accordance to the phrases stated within [a]rticle III §§ 1 and 2 [1] of the constitution of the United States. Its petitioners interpretation thereof, that Congress expressly dedicated all constitutional authority to the United States Supreme Court to invoke and enforce individual's constitutional rights when brought to its attention. And the United States Supreme Court has the express authority to dedicate the same fiduciary responsibility to all inferior courts, meaning, the U.S. district courts and all State's Supreme Courts. And the State's Supreme Courts are responsible to the United States Supreme Court that all its state inferior courts uphold all individual's constitutional rights the same as spelled out by the Alaska elected lawmakers invoked within the Alaska

constitution, article IV §§ 1 & 2 respectively. Accordingly, petitioners' beseeched our constitutional rights of this matter first within the Alaska constitutional Superior Court. Upon its neglect to honor us our constitutional due process rights is construed a neglect, to perform its sworn(ed) fiduciary responsibility. Accordingly, we were left high and dry in an alleged constitutional court of competence with no other choice but to beseech redress within the Alaska State Supreme Court, under inter alia Appellate Rule 201 resulting from Appellate Rule 202 directions, in compliance with ib., Rule 204. Unfortunately for "us" the petitioners, the Alaska Supreme Court also gave disrespect to its fiduciary responsibility by unlawfully and willfully neglect to uphold its constitutional

sworn(ed) oath of office to uphold the flag of the United States, as set out in the pledge of allegiance to the United States flag. Accordingly, we construe that, the respondents acts, practices, and policies, (a) violated their ethic responsibility to their oath of office, (b) to their law colleagues, (c) to the public trust, (d) to the court in which it practices its profession, (d) to before the judge which administers the cases within its court rooms. Accordingly, not only did petitioners not receive our constitutional due process rights, the records reflect, that the indigent pro se petitioners lost the benefit of their hard earned $750.00 appeal bond, and $70.00 filing fees to the state totaling $820.00. Accordingly, that should be construed the state court invoking slavery under state law in

violation of the 13th amendment of the United States constitution. Accordingly, such acts should be construed redherring and heinous, hiding under the veil of their job title and/or positions. See: The equal protection clause to the 14th amendment to the United States Constitution, 42 U.S.C.S. § 1983.

The records reflect, despite all aforementioned remedies taken thereof by the petitioners, all efforts were unconstitutionally defeated from the lack of state courts' refusal to cooperate by honoring their sworn(ed) fiduciary responsibilities. In fact, it's obviously noted from the Alaska Supreme Court writing within the attached Appendix A-1, Lines 4-6, that their being very little to no respect for the indigent's pleadings, forthcoming from the State of Alaska high

court phrased insults stated hereof pursuant inter alia to the Code of Professional responsibility DR 10102 (A)(1) thru (6), was unbecoming for any judicial or other officer of these courts to redherringly assert, even if one is not acting within its own defense. See: Conley vs. Gibson, 355 US 41, 2 L.Ed 2d 78 S. Ct 99, at P, 80., and Gillespie v. Civiletti, 629 F.2d 637 (1980) at P. 673 1st column, P. 640 article II.A §§[1 thru 5] P. 641 1st and 2nd columns §§[6 thru 12] respectively.

Accordingly, it was more shocking having to bear witness to the facts of the Alaska highest court. The Supreme Court justices go beyond ethical conduct to corroborate with its clerk's assertion. But to also go along with its Clerk's assertion, while signatorial to the prejudicial slanderish

open remarks assessable to the public viewers to look down their noses at petitioners as being uneducated illiteracy not just to legal pleadings, but also in general. That brings back memories of the 1964 Civil Rights Voting Rights Act, as a direct result, we construe that the state courts, along with our prosecutors, selected petitioners for malicious prosecution from the results of the Alaska State Superior Courts very first date of petitioners August 12, 1985 filing of the complain against all named respondents. See: Appendix A-1, Lines 4 thru 6, respectively, and United States vs. Tibbetts, 646 F.2d 198 (1981) at P. 195 2nd column §[4]. According to the attached appendices exhibits as pages B-1 thru 18.1 are some few pertinent pleadings done between the petitioner and the respondents

between the 12th day of August, 1985 and December 1988.

Based upon facts that petitioners out right over and over refused a day in either of Alaska State courts to defend our guaranteed constitutional rights, despite the facts of our several requests thru pleadings in State Superior Court, in fact, our first motion was on August 12, 1985 [B-2 thru 2.5]. And the results came from the lower court expeditious first 8/12/1985 day's relief by Order No. A-4, again the lower court denied our entering her court room in defense of our constitutional rights, see: attached Appendices A-5 and a-6 thru 6.3 respectively. Accordingly, we construed that such lower court irregular legal acts, practices and policies proved to be so strongly consistent with lower court authority based against our being

able to enjoy our constitutional rights which is guaranteed to us by the constitutions of both the United States and the State of Alaska, Article I, § 7 thereof. Accordingly, we were left with no other remedy but to construe that such lower court acts were so forcefully favoring the respondents from Jump Street of 8/12/1985, for so long, until the case reached its iron clad resistible climax completely and totally exhausted to prevent the petitioners from seeking further relief in the [marked to lose] state courts, while at all times knowingly, or should have known that such acts would have forced us having to inexperiencely consult this highest court of these United States for our constitutional lawful due relief properly sought in lower state courts to no avail, thereby, with us knowingly, that

this legal approach is our last "legal" recourse for constitutional relief as we know it to be today in this society. Accordingly, it's quite clear to us from the lower court's first irregular act of 8/12/1985 Order that we were then marked for selective prosecution, attached here as A-4 respectively, see: inter alia Alaska Civil Rules 77 (c) and 12 (a) were borrowed in this matter based on the grounds, that the lower court tailored this case as its [taunt.] act of 8/12/1985 expedite own initiative under its Supremacy veil Order there of A-4. We construe, that such lower court irregular acts caused us having to undergo damaging hardship doing our attempting to post legal effective defenses on our behalf, see: United States vs. Tibbitts, set out supra at P. 10. Furthermore, we contend that the documents

within the state courts' records, do clearly and convincingly demonstrate to this Honorable Court, that we, the petitioners, did beseech our constitutional rights through the state courts, time after times to no avail. please review our attached appendices, Exhibits B-1 thru B-18.1, which represent a limited amount of lower court parties' pleadings.

LASTLY

The respondents' acts of asserting authority of their standing dedicated statutory right to property line easement right-of-ways rights at will, without having to invoke eminent domain doctrine, and escaping the use of invoking the 5th amendment to the United States's constitution, or article I. § 18 of Alaska constitution, by their strong arm tactic, threatening prosecuting plaintiff Bibbs

with police protection and jail tie if he in any ways attempted to cause any type of defense causing stoppage of the construction. It's noticed that defendants' taking was done under the color of Borough and State laws.

Accordingly, the documents which are attached hereof as Exhibits "A, B & C" demonstrated, that Mat-Su Borough charged the in-question real property legal "The South one quarter (SE 1/4) of the Southeast one quarter (SE 1/4) of the southeast one quarter (SE 1/4) of Section 25, Township 17 North, Range 2 East, Seward Meridian, being within the Palmer Recording District, Third Judicial District, State of Alaska", real property taxes on the entire ten (10) acres for some odd 35 years. Accordingly, their taking without invoking eminent domain violated the petitioners' constitutional

rights while the respondents invoked the Slavery Act of taking said property without just compensation, based on grounds that Alaska Statutes § 09.25.050, makes itself quite clear on conclusive evidence on adverse possession. However, in the same breath it also makes itself clear that Municipalities may not be divested of title to real property by adverse possession, AS 29.71.010. In this matter the Mat-Su Borough did not hold title to any portion of the in-question real property, even though there may have been provision in the real property deed on real property line easement, etc. However, the statute which elaborate on real property line easements in private resident areas speaks of four (4) rods width, meaning that two rods per each section line side, try AS 19.10.010 respectively. Accordingly the statute is

clear on lenient feet per each one (1) rod = 16-1/2 feet each times [X] four (4) = sixty-six (66) feet width divided by two (2) equals thirty-three (33) feet per side of section line. In this instant, petitioners lost 33 feet from two sides of said property because of enjoying a chosen corner property. That did not create a non-working problem. But, however, what did create a problem was when the Borough knew or alleged to have known, that they would one day reserve the 33 feet of petitioners real property, at the owners expense hidden from the average layman real property owner by assessing real property taxes on the entire ten (10) acres and demanded payment thereof under the color of Borough and State laws. And it can be viewed from this very piece of real property, that it was seized for non

payment of property taxes and sold to cover the alleged non-payment of taxes. Accordingly, that's fraudulent conveyance, and is subject to repossession or redress for damages, check-it-out. According to AS 09.10.030, elaborates, that no person(s) may bring an action for recovery of real property, unless commenced within ten (10) years. And AS 09.25.050 elaborate, on one(s) paying real property taxes continuance for seven (7) years or more is entitled to said real property. Accordingly, we foresee there's no lawful ways that entitled the Borough to an automatic easement right-of-way without first invoking the eminent domain doctrine. The facts remain to reflect, that the ten (10) acres, 33 feet, the owners were not allowed to do anything constructive, in the meantime, keep in mind that the Borough

sold said real property with the intent of charging the owners for something they could not use ever because of the ties within the real property titles. Accordingly, it should be viewed, that the manner in which the Borough took petitioners' real property without invoking eminent domain doctrine was an act of slavery protected under the veil of color of state law, in the meantime attempting to coverup the over-charged real property taxes which they had done and is no doubt continuing to do so with certain other real property owners. Accordingly, that's embezzling and unjust enrichment from real property owners' hard earned monies. Accordingly, it should be kept in mind that, petitioners were assessed property taxes, invoiced, billed and demanded payment for the entire ten (10) acres for

over some thirty (30) years, and neglected to redeem or attempt to redeem said right-of-way rights by refunding said property owner(s) the over charges which had been paid upon the Borough's demand, and rightfully due them. Arguendo, it may have worked if prior to the immediate beginning right-of-way construction if the Borough had gone to individuals and made each a just dollar value for the easement portion taken, it would have saved a bunch, if for no more than the pubic respect. The records reflect, that the Borough chose to invoke slavery to go along with fraud.

There's one other item which should be brought to this court's attention. And that is the Alaska State Superior court Order of June 15th, 1988, as A-14 thru 14.9, which I make reference to A-10.7 claiming the Borough having an absolute

easement right-of-way right. We disagree based on the immediate foregoing, A-10, asserted that respondent Lancaster personally delivered the Borough's notice of construction of said road right-of-way to Mr. Bibbs at his resident on the "31st day of July 1985." The records reflect, that construction had already begun on or about mid July 1985. See: B-3 and B-10.1 is noted to have been served upon Mr. Bibbs by certified return-receipt requested on 7/25/1985. It's noted that said sworn(ed) affidavit failed to insert proof of certified service upon Mr. Bibbs, B-11.1, which reflects proof that their styled notification failed complying with AS 38.05.945 (b) and (c). According to the records asserted in part that at least thirty (30) days notice prior to any action commence. The records reflect that when

petitioner was served said notice construction was already underway by the respondents, B-12 and 12.1. Accordingly, the lower court's written Order failed to present facts to comport its Order, as set out supra by the petitioners, see: A-14.5 thru 14.9 respectively.

The granting of the writ of certiorari by the Supreme Court of the United states to settle the four (4) conflicts set forth in the petitioners' petition for the writ of certiorari would prove an unprecedented legal relief factual and constitutionally judicial administration whom have presented evidence to probable judicial conspiracy to commit fraud by the respondents against the petitioners throughout the entire State of Alaska legal proceeding whose federal protected rights are guaranteed by inter alia the Equal Protection clause of the

United States constitution set out within the 14th amendment, constitutionally, statutory, and case law.

Based on the foregoing, I contend that in many ways this matter addresses this court finding of May 29th, 1979 Green vs. Georgia, 442 at P, 95 2nd ¶, Pp. 96 and 97 finding, especially when considering the State of Alaska Supreme and Superior Court's denial of receiving us within its court room to defend ourselves in our constitutional right., see attached exhibit A-1.1, A-6.1, A-6.6, versus page V citing.

CONCLUSION

Therefore, the petitioners prays the Supreme Court of the United States to grant the writ of certiorari to settle the four (4) conflicts set out in this petition.

Respectfully submitted;

Dated at Anchorage, Alaska this _____

day of February 1991.

_____

Mr. Jimmie Drew Lockhart, Sr. pro se, and

_____

Mr. Freddie Bibbs, pro se: for petitioner
3727 Randolph Street
Anchorage, Alaska 99508
(907) 563-1807, message.

CERTIFICATION OF SERVICE

I certified on this _____ day of Februar
1991 that I caused two correct copies to b
served upon petitioners' attorney of recor
who's address is at 2550 Denali Street
Suite 700; Anchorage, Alaska 99503.

_____

Jimmie Drew Lockhart, Sr.

Subscribed and sworn heretobefore me thi
____ day of February 1991. Notary Publi
in and for the State of Alaska.

_____

My Commission expires:_____

APPENDIX A

SUPREME COURT FOR THE STATE OF ALASKA

NOS. 83-127, 3PA 85-1405 CIVIL

MR. JIMMIE DREW LOCKHART, SR. AND MR. FREDDIE BIBBS, et al., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLANTS

VS.

MATANUSKA-SUSITNA BOROUGH, INC., et al., DEFENDANTS-APPELLEES

Appeals of: The Law-Offices of Pletcher, Weining, Lotteridge and Moser

---

Appeal from the Supreme Court for the State of Alaska before the Clerk Mr. David A. Lampen, acting on Order of Mathews, Chief Justice, and Rabinowitz; Nos. S3-127 3PA 85-1405 Civil

---

THIS CASE NEVER SAW THE INSIDE OF ANY COURT ROOM IN OUR DEFENSES

BEFORE MATHEWS, CHIEF JUSTICE, and Rabinowitz, Justice descending. They would render a decision on the merits after briefing by the appellees.

APPENDIX A

Page(s)

A. Court Orders Sought to be Reviewed

1. June 27, 1990 order of the Supreme Court for the State of Alaska. A-1.1

2. September 14, 1990 order of the Supreme Court for the State of Alaska.....A-2.1

3. September 21, 1990 order of the Supreme Court for the State of Alaska.....A-3.1 and A-3.2

4. August 12, 1985 order of the Superior Court Third Judicial District at Palmer, Alaska....A-4.1

5. August 28, 1985 order of the Superior Court Third Judicial District at Palmer, Alaska....A-4.2

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No. S3 127

SUPREME COURT FOR THE STATE OF ALASKA

Ms. Martha N. Stores Pro Se, et. al. Appellants.,	)	Filed June 27, 1990
vs.	)	ORDER
Matanuska-Susitna Borough, Inc., et. al., Appellees.	)	

Despite being given several opportunities to do so, appellants have not filed a brief which meets the requirements of the Appellate Rules. Appellants' argument is largely unintelligible and unsupported by citation to specific portions of the record. Accordingly, the appeal is dismissed with prejudice.[1]

SO ORDERED

Entered by direction of the court, this 21st day of June, 1990, at Anchorage, Alaska.

CLERK OF THE SUPREME COURT

DAVID A. LAMPEN

---

1. Matthews, Chief Justice, and Rabinowitz, Justice, dissent. They would render a decision on the merits, after briefing by the appellees.

june:4

No. S3127

SUPREME COURT FOR THE STATE OF ALASKA

MARTHA N. STORES, et. al.,	)	Filed
	)	9/14/1990
APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH, Inc., et. al.,	)	
	)	
DEFENDANTS.	)	
	)	

Trial Court No. 3PA 85-1405 Civil

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and More, Justices.

The court issued a full court order on June 22, 1990, dismissing the above appeal with prejudice. The appellants submitted a document on August 23, 1990, that the court has treated as a motion for full court reconsideration of the order of June 22, 1990.

IT IS SO ORDERED:

The motion for reconsideration of the order of June 22, 1990, dismissing the appeal is denied.

Entered by direction of the court at Anchorage, Alaska on September 11, 1990.

DAVID A. LAMPEN, SR.
Clerk of the Supreme Court

[Matthews, Chief Justice, and Rabinowitz, Justice, dissent. They would grant motion for reconsideration.]

No. S3127

SUPREME COURT FOR THE STATE OF ALASKA

MARTHA N. STORES, et. al.,	)	Filed
	)	9/21/1990
APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH, Inc., et. al.,	)	
	)	
DEFENDANTS.	)	
	)	

Trial Court No. 3PA 85-1405 Civil

The appellants filed an application on August 23, 1990, which the court treated as a motion for full court reconsideration of its order of June 22, 1990, dismissing the above appeal. The appellees moved on September 10, 1990, to file an opposition to the motion for reconsideration. On September 14, 1990, the full court filed an order denying the motion for reconsideration. On September 18, 1990, the appellants submitted an opposition to

the motion for reconsideration.

IT IS SO ORDERED:

The motion for leave to file an opposition to the appellants' motion for reconsideration is dismissed as moot in light of the order of the full court of September 14, 1990, denying the motion for reconsideration.

Entered by direction of an individual justice at Anchorage, Alaska on September 19, 1990.

DAVID A. LAMPEN, SR.
Clerk of the Supreme Court

IN THE SUPERIOR COURT FOR THE STATE OF

ALASKA THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o	)	**Filed**
MR. FREDDIE D. BIBBS and	)	**8/12/85**
MR. JIMMIE DREW LOCKHART,	)	
SR., PRO SES.,	)	No. 3PA 85-
	)	1405 Civil:
PLAINTIFFS-APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH,	)	
MR. PATRICK E. LANCASTER,	)	
et. al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	
	)	

ORDER DENYING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE

Plaintiffs' motion for an ex parte temporary restraining order is hereby DENIED without prejudice. Plaintiffs' assertions do not meet the criteria in Civil Rule 65 (b)(1) and (2).

Dated at Palmer, Alaska this 12 day of August, 1985.

Beverly W. Cutler
Superior Court Judge:

IN THE SUPERIOR COURT FOR THE STATE OF

ALASKA THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o	)	**Filed**
MR. FREDDIE D. BIBBS and	)	**8/28/85**
MR. JIMMIE DREW LOCKHART,	)	
SR., PRO SES.,	)	No. 3PA 85-
	)	1405 Civil:
PLAINTIFFS-APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH,	)	
MR. PATRICK E. LANCASTER,	)	
et. al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	
	)	

This court denies plaintiffs' Ex parte Motion to Compel Immediate Service. Plaintiffs are requesting the court exercise jurisdiction over a part not a party to the instant action.

Dated at Palmer, Alaska this 28 day of August, 1985.

Beverly W. Cutler
Superior Court Judge:

The court's certification of service by regular U.S. mail to each parties Att: on the 28th day of August 1985.

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS, et. al., PRO SE.,	Filed 12/11/1985
PLAINTIFFS.,	No. 3PA 85-1405 Civil
VS.	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

O R D E R

With this court having knowledge of the above Captioned case, and upon observing the attached motion the court can find no prejudice to defendants, in granting plaintiffs' motion .

WHEREFORE, IT IS SO ORDERED. (The court: Extension until Dec. 23 granted.)

DATED this 11 day of December 1985.

BEVERLY W. CUTLER, SUPERIOR COURT JUDGE:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 1/16/1986
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO RECONSIDER

Plaintiffs have moved the court to reconsider its refusal to enter default and default judgement against Defendants. Plaintiffs have also requested that the court withdraw the October 30, 1985 substitution of counsel filed by Defendants Matanuska-Susitna Borough and Patrick Lancaster. Lastly, the Plaintiffs have requested that the court schedule either a default judgement hearing to determine

damages or a settlement conference.

On October 30, 1985 Plaintiffs requested entry of default and default judgement against each Defendant in this action. Plaintiffs state that they were entitled to this relief as a matter of right.

This argument is without merit. Civil Rule 55 (d) states that "[a] party may respond to any pleading at any time before default is entered." The facts clearly show that the answer of Defendants Matanuska-Susitna Borough and Patrick E. Lancaster was filed on October 23, 1985; therefore, an entry of default and default judgement was not warranted against those Defendants.

Additionally, the answer of Defendants Jim Psenak and Psenak Construction Company was filed on November 1, 1985, two days after Plaintiffs filed their request for

entry of default. This court takes judicial notice of the facts that the Clerk of Court could not reasonably have been expected to act upon Plaintiffs' request prior to November 1, 1985. Subsequent to November 1, 1985 the Clerk had no discretion to enter default and default judgement against Defendant Jim Psenak and Psenak Construction Company, as their answer had been filed. See Civil Rule 55 (d).

Plaintiffs have also requested that the court withdraw the october 30, 1985 substitution of counsel filed by Defendants Matanuska-Susitna Borough and Patrick E. Lancaster. This court will consider this request as a motion for reconsideration.

Civil Rule 77 (m) requires that motions to reconsider be made with in ten days after notice of ruling. Plaintiffs' motion

is not timely, and the court need not address it on the merits.

Nevertheless, the court notes that Plaintiffs' arguments in support of withdrawal are devoid of merit. A party is entitled to have any number of counsel of record, a party is entitled to liberally substitute counsel, and Civil Rule 81 (d) (1) (i) does not require that the substitution be in the form of a motion.

Lastly, Plaintiffs have requested that the court schedule either a default judgement hearing to determine Plaintiffs' damage or a settlement conference. Because the court has declined to enter default against Defendants, a default judgment hearing is unwarranted at this early stage of litigation. However, any party may request a settlement conference at some future date when the action has been

narrowed somewhat.

DATED at Palmer, Alaska this 16 day of January, 1986.

BEVERLY W. CUTLER,
SUPERIOR COURT JUDGE

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 2/25/1986
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO RECONSIDER

The court has reviewed Plaintiffs' motion to reconsider, filed January 27, 1986. Plaintiffs have requested that the court reconsider its January 16, 1986 Order denying Plaintiffs' previous motion to reconsider. The court HEREBY DENIED Plaintiffs' motion.

The court notes that Plaintiff's request for extension of time, filed November 14, 1985 and granted December 11, 1985, covered

only an extension of time to object to the court's refusal to enter default and default judgment. The motion did not request an extension to file a late motion to reconsider the November 13, 1985 substitution of counsel. Therefore, Plaintiffs' December 23, 1985 motion to reconsider the substitution of counsel was untimely.

Dated at Palmer, Alaska this 25 day of February, 1986.

BEVERLY W. CUTLER
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 3/5/1986
PLAINTIFFS,	No. 3PA 85-1405 Civil:
VS.	Pleading dated 2/5/86.
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Plaintiffs' motion for clarification
DEFENDANTS.	of the court's 2/25/86 Order and 4/29/86 Order.

Come now plaintiffs, Bibbs and Lockhart, Sr., and move this court for clarification of it's February 25th, 1986 Order on the following ground:

That, inasmuch as this court has cited its notification of plaintiffs' motion to file late as alleged. Plaintiffs' failed to cited any cited specifies thereof. However, plaintiffs, find within their office records, their motion opposing

substitution of counsel on grounds of his failure to provide pursuant to Civil Rule 81 (d) (1)(i)(ii)(iii) inter alia, until legal practicing attorney had properly withdrawn as Civil Rule 81 so states. Plaintiffs further noted this court invoking plaintiffs' motion as untimely filed, which is what plaintiffs have been attempting to insist the court to invoke that the defendants' pleadings were not timely filed to plaintiffs' complain, motion, etc., and especially after defendants failed to timely reply thereto said aforementioned pleadings. Plaintiffs, bring attention to this court that, upon their plaintiffs' pleadings within their complain followed thereafter by motion of default and default judgment. And that this court without an opposition by either defendant, the court on it's own Order took

action in the defendants' defense by merely pencilling in "NOT USED" to plaintiffs' pleadings, etc. Inasmuch as this court in its own way defending the defendants, could be abused of its discretionary authorities. At the meantime, the court within its February 25th 1986 Order invoked Plaintiffs' allegedly untimely reply after granting plaintiffs' motion to file late. And on the other hand hailing to invoke defendants' errors the same as the plaintiffs' allegedly untimely pleadings, why? In the meantime I/we the plaintiffs, are understanding, that this court may have committed an intentional error it its findings.[1/] See: U.S.C.S. 42. §§ 1981, 1982, 1983, 1985, 1988 and 2000., article I. §[7] to Alaska constitution, the 14th amendment to the United States constitution, see: Church of Scientology

vs. United States Department of Justice

612 F.2d 417, 422 (9th Cir. 1979).

Without pointing out further errors plaintiffs, for the third time beg of thi court to carefully review its finding ar grant the plaintiffs default and defaul judgment in the interest of justice.

Thank this court in advance
respectfully submitted.

Dated at Anchorage, Alaska this 5th da of March, 1986.

Mr. Freddie Bibbs, pro se:
and

Mr. Jimmie Drew Lockhart, Sr.,
pro ses:

1/ ORDER

This request is hereby denied. The court has reviewed the February 25 Order and has determined that it needs no clarification. 4/29/1986.

Beverly W. Cutler

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 7/6/1987
PLAINTIFFS,	No. 3PA 85-1405 Civil: Plaintiffs' Motion for Order Compelling and Order.
VS.	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

That this court issue an order compelling defendants to reply (respond) to plaintiffs' 9th day of September, 1985 request for documents (pursuant to Alaska Civil Rule (34)), defendants are required and ordered to respond within 30 days after the signing of this order.

The plaintiffs, are to respond to defendants' 29th day of May, 1986 request for production of documents within 20 days thereafter receipt of defendants' response

to "their 9/9/1985 requested production. And the court further order that both parties cooperate with each other from this date forward.

Respectfully submitted:

Dated at Anchorage, Alaska this 6th day of July 1987.

Mr. Jimmie Drew Lockhart, Sr., Pro Se; and

Mr. Freddie Bibbs, Pro Se:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 9/25/1987
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

IT IS HEREBY ORDERED, that defendants are to respond to plaintiffs' 9th, 1985 request for production within _____ days after singing of this order. And plaintiffs are to respond to defendants' May 9th 1986 request for producing within ____ days upon his (therein) receipt of defendants' reply. And both parties are to better cooperate with each other from this date forward, or this court will deal with the situation accordingly, hereafter.

Done at Palmer, Alaska on this _____ day of _____ 1987.

_____
Beverly W. Cutler,
Superior Court Judge:

Received at plaintiffs' office on 10/10/87

ORDER

"Moot, see plaintiffs' motion of 8/24/1987, granted by court this _____ 9/25th/87.

_____
Beverly W. Cutler, Superior Judge:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 8/24/1987
PLAINTIFFS,	No. 3PA 85-1405 Civil:
VS.	Order 9/25/87
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Served 10/10/87
DEFENDANTS.	

Come plaintiffs, and move this court to resign their 1985 request for production and move for shortening time. The reason is, in order that said request is now being replaced with an updated request for documents, etc.

Respectfully submitted:

Dated at Anchorage, Alaska this 19th day of August, 1987.

Mr. Freddie D. Bibbs, Pro. Se, and

Mr. Jimmie Drew Lockhart, Sr.
Pro Ses

O R D E R

This court is knowledgeable of plaintiffs' motion to resign its' 1985 request for production. It's this court's position, that no sign of damages appears to cause prejudice to defendants' defenses. Therefore, this court grants plaintiffs' motion.

WHEREFORE, IT IS SO ORDERED. [the court] (no opposition have been filed).

Dated this 25th day of September 1987.

Beverly W. Cutler,
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 10/1/1987
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

O R D E R

The order for shortening time is moot. The 30 days regular time to respond already has passed. Plaintiff did not move for expedited consideration.

Dated at Palmer, Alaska this 1st day of October, 1987.

Beverly W. Cutler
Superior Court Judge

Received at Plaintiffs' office 10/10/1987.

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 8/27/1987
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	Served on Plaintiffs 10/10/1987.
DEFENDANTS.	)	

O R D E R

Thru this court's notice of plaintiffs' asserted perusal through the parties' 1987 pleadings, shows to this court several defendants' repeated, reiterated argumental citing without showing authorities.

Plaintiffs' further argues that defendants' said response shows "emphatic" demands aimed at this court's ruling before further action will be performed says defendants' 19th day of August, 1987

pleading., id., at page one (1).

Plaintiff has moved to rule defendants' 19th day of August 1987 pleading be ruled frivolously filed.

Plaintiffs' move this court to invoke 42 U.S.C.S. § 1988 and Civil Rule 82 and Alaska.

Plaintiffs, have also moved that defendants' 19th day of August 1987 pleading be sanctioned $500.00 penalty for posting said pleading tobefore this court. And plaintiffs be compensated for having to respond thereto said $500.00 moot pleading.

This court has reviewed plaintiffs' foregoing motions, and find no prejudice in which would prejudice defendants' defenses. Therefore, this court grants plaintiffs' above cited motions on the merits.

WHEREFORE, IT IS SO ORDERED.

Dated this _____ day of _____ 1987.

Beverly W. Cutler,
Superior Court Judge

The court's writing in Order:

(sic) "Moot" plaintiff withdrawn original motion that led to my ruling.

Beverly W. Cutler
Superior Court Judge
7/25/1987

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	)	Order 9/28/1987
PLAINTIFFS.,	)	3PA 85-1405 Civil:
VS.	)	Received 10/10/1987
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO DISMISS
WITHOUT PREJUDICE

The parties are urged to review the other orders accompanying this Order.

The court finds, in its discretion, that a Rule 41 (e) dismissal is not warranted at this time. Plaintiffs' are warned however that all further conduct in this case, including discovery requests and the

court's regulation of discovery, will be strictly governed by the Alaska Rules of Civil Procedure and other relevant rules and statutes.

Dated at Palmer, Alaska this 28th day of September, 1987.

Beverly W. Cutler
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	)	Order 4/1/1988
PLAINTIFFS.,	)	3PA 85-1405 Civil:
VS.	)	The court's notice to the Plaintiffs.
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	)	
DEFENDANTS.	)	

N O T I C E

The court has pending a Motion for Summary Judgment filed by defendants in this case. The Alaska Supreme Court has just recently stated that trial court has the duty to advise pro se litigants of proper procedure for the action they are attempting to accomplish. Breck vs. Ulmer,

et. al., Supreme Court Opinion No. 3241, November 6, 1987. Therefore, the court hereby notifies plaintiffs that they must comply with the requirements of Civil Rule 56 (e) and submit affidavits in opposition to defendants' Motion for Summary Judgment. Plaintiffs shall have fifteen days from the date of receipt of this order in which to submit said affidavit.

Dated at Palmer, Alaska this 1st day of April, 1988.

Beverly W. Cutler
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES., PLAINTIFFS., VS. MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al., DEFENDANTS.	Order 5/16/1988 3PA 85-1405 Civil: Served On Plaintiffs 6/22/88

ORDER

Plaintiff has filed two Motions to compel response to request for production. These Motions were filed on September 28th and October 15, 1987. The court has reviewed the filing in this case and finds that said motions are moot. Defendants appear to have responded to plaintiffs'

requests for production. Therefore, the motions are hereby DENIED without prejudice.

DATED at Palmer, Alaska this 16th day of May, 1988.

Beverly W. Cutler
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 6/15/1988
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	Served On Plaintiffs On The 22nd Day of June 1988.
DEFENDANTS.	)	

ORDER GRANTING SUMMARY JUDGMENT

This matter has come before the court on defendants' Motion for Summary Judgment. The court has carefully reviewed the pleadings, exhibits and affidavits in the case and has allowed plaintiffs a second opportunity to submit affidavits to the court in opposition to the summary judgment motion.

The court hereby finds that there are no genuine issues as to any material facts and

that defendants are entitled to judgment as a matter of law. Therefore, defendants' Motion for Summary Judgment is GRANTED.

This action concerns the construction by defendants of the road known as the Plumley Loop/Claudill Road Extension along the edge of plaintiffs' property in the Butte area outside of Palmer. Defendants surveyed the location of the § line forming the eastern boundary of plaintiffs' property. Defendant Matanuska-Susitna Borough claimed an easement for public road purposes along the § line, and built the road on the line.

Plaintiffs brought this action pro se, asking for both damages and declaratory and injunctive relief against defendants for the surveying and construction of the road. Their complaint included many different causes of action, sometime stated in a confusing manner. The court has discerned

the following claims from the allegations in the complaint:

(1) Defendants unlawfully failed to notify plaintiffs that the § line would be used for a public road;

(2) Defendants trespassed upon plaintiffs' property;

(3) Defendants trespassed upon plaintiffs' property in a manner that constituted racial discrimination against plaintiffs;

(4) Defendants failed to pay plaintiffs just compensation for the land on which the road was constructed;

(5) Defendants discriminated against plaintiffs because of their race;

(6) Defendant Patrick Lancaster acted improperly in his interactions with plaintiffs.

The case has had a rather unorthodox

history since plaintiffs filed their complaint. Both sides attempted to narrow the issues through the discovery process, with little success. At one point, plaintiffs attempted to remove the action to federal court but were unsuccessful.

Finally, in November 1987 defendants filed their Motion for Summary Judgement. Plaintiffs responded to the motion in a manner that indicated that they were unfamiliar with the requirements of the Rules of court governing motions for summary judgment. Because of Alaska Supreme Court has stated that trial courts have the duty to advise pro se litigants of the proper procedures to follow under the rules governing civil litigation, Breck vs. Ulmer, 745 P.2d 66, 75 (Alaska 1987), this court issued a Notice informing plaintiffs that they should submit affidavits in

opposition to defendants' summary judgment motion. Plaintiffs submitted affidavits in response to his Notice on April 12, 1988.

ISSUES PRESENTED

Civil Rule 56 (c) states that a motion for summary judgement shall be granted if the moving party shows that there is no genuine issues as to any material facts and that it is entitled to judgment as a matter of law. Defendants first argue that plaintiffs' complaint itself acknowledges that plaintiffs were given written notice prior to the surveying of the property that the § line would be used for public road purpose. The court finds that defendants are correct. The complaint stated that "on or about July 31st, 1985, Borough's official Mr. Lancaster, came to plaintiff Mr. Bibbs' home and served with supra exhibit "A"... [sic]." Exhibit A is a copy

of the written notice provided to plaintiffs by defendants, which stated"[y]ou are hereby advised that the new road will use the existing § line easement . . . ." The court finds that there is no genuine issues of fact as to whether this notice was presented to plaintiffs. Therefore, defendants are entitled to summary judgement as to the first of plaintiffs' claims listed above.

Defendants next argue that there are no genuine issues of fact as to the next three claims, because the Borough has a reserved easement for public road purposes along § lines.

The court finds that defendants are correct in this assertion. AS 19.10.010, provides that a right-of-way four rods wide is dedicated for public highway use along §§ line. See Girves v. Kenai Peninsula

Borough, 536 P.2d 1221, 1225-1225 (Alaska 1973). Giving that the Borough has such a right-of-way easement, it follows that the Borough was within its rights in using a strip two rods wide on plaintiffs' side of the § line to build its road. Defendants also have presented the court affidavit that establish that the road was constructed entirely within the strip covered by the right-of-way.

Plaintiffs have failed either to rebut defendants' legal arguments or to show a genuine issue of fact as to the construction of road within the right-of-way. Plaintiffs have alluded to a "dog-leg" in the road in several of their filings, possibly implying that the road does encroach upon their property. These allusions, however, do not amount to a showing sufficient to establish a genuine

issue of facts under Rule 56 (c).

Giving that defendants properly built their road within a right-of-way reserved to them by statute, it follows that defendants are entitled to judgment as a matter of law as to plaintiffs' claims numbered two, three and four above. The existence of right-of-way negates the possibility of a trespass and the need for just compensation to the plaintiffs.

Plaintiffs appear to raise one issue that must be addressed at this juncture. Plaintiffs appear to argue that defendants built the road entirely on plaintiffs' side of the § line and left intact the strip two rods wide on the other side of the line. Although it is by no means clear from plaintiffs' statements, the court surmises that plaintiffs may be attempting to argue that defendants committed racial

discrimination against plaintiffs by building the road in such manner. There are several barriers to the court accepting this argument, however. First, it was not raised in plaintiffs' complaint, but only appeared later in the litigation. Plaintiffs never have moved for leave to amend their complaint to assert this argument. Second, the argument is not presented in a a form that conforms to the Rule 56 (c) requirements for opposing summary judgment (the court found mention of the theory in copies of plaintiffs' interrogatories in the case file). Third, plaintiffs merely mention the theory and do not substantiate it with any specific showing of discriminatory acts or intent which would establish an actionable claim in this regard.

This theory concerning the construction

of the road entirely on plaintiffs' side of the § line is the only ground on which plaintiffs appear to base their fifth claim of general racial discrimination. Therefore, summary judgment is granted to defendants as to this claim as well.

Plaintiffs' final cause of action concerning allegations of misconduct against defendant patrick Lancaster, a Borough right-of-way agent who worked on the Plumley Loop/Claudill Road Extension project. Plaintiffs' claim against Lancaster is unclear, but it appears to e linked with plaintiffs' claim of improper notice of the impending surveying and road-building work on the edge of their property. The court already has determined that defendants are entitled to judgement as a matter of law as to the issue of notice, and plaintiffs have failed to show